

Appl. No. 10/616,657
Election/Restriction Response dated November 2, 2005
Reply to Office Action, dated October 6, 2005

Remarks/Arguments

- a. Claims 1-22 are pending and are subject to restriction and/or election requirement per the above referenced October 6, 2005 Office Action.

Per a March 22, 2005 Office Action claims 17 – 21 were allowed, claims 3, 10, 11, 16, and 22 were objected to but deemed to recite allowable subject matter, and claims 1-2, 4-9, and 12-15 were rejected on varying grounds under 102(b) and 103(a). Responsive to the March 22, 2005 Office Action a Response was filed on June 20, 2005 that amended FIG. 2 and traversed the Examiner's rejections.

In view of the comments below, Applicant respectfully requests that the Examiner reconsider the present application and claims 1-22 and withdraw the restriction / election requirement regarding these claims.

- b. Pursuant to the requirement under 35 CFR §1.143, Applicant provisionally elects (elects with traverse) the invention defined by claims 9 - 22 and requests reconsideration / withdrawal of the restriction requirement pursuant to the provisions of that section. Applicant respectfully submits that even if *arguendo* claims 1-22 define distinct inventions there is no undue burden on the Examiner under the circumstances and thus the minimum requirements for a proper restriction have not been satisfied.

- c. The present application concerns apparatus and methods for adjusting pixel depth of image data supplied to a display panel. The application discloses and claims various embodiments of the invention, such as an electronic device (claims 1-8) and various methods (9-22).

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d. The Examiner has concluded that the various embodiments discussed and as claimed are patentably distinct inventions and issued a restriction requirement in accordance with 35 U.S.C. §1.121 ("If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions") requiring that Applicant make at least a provisional election of the inventions defined by claims 1-8 or claims 9-22. Applicant has complied (electing with traverse claims 9-22) with these requirements in accordance with 37 CFR §1.143 at paragraph b above.

e. Applicant respectfully disagrees with the Examiner's issuance of a restriction requirement. Applicant notes that 37 CFR 1.142 allows a requirement for restriction to be made at any time before a final action including, e.g., after an Office Action on the merits. Even though issuing a restriction requirement under these circumstances is not forbidden, the Examiner must still satisfy the minimum criteria for restriction of invention as outlined in the MPEP. Applicant further respectfully notes that MPEP §803 minimally requires that in order for a restriction to be proper not only must the inventions be independent or distinct, but also there must be a serious burden on the Examiner. Specifically in relevant part, MPEP §803 states:

"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

Applicant is extremely surprised that the Examiner is attempting to restrict after an action on the merits. Even if *arguendo* the separate groupings of the claims represent a separate invention, continued prosecution of the entire application is entirely appropriate, given the present circumstances and a failure of the Examiner to allege, show or support the necessary assertions of undue (serious) burden, which is required to issue and maintain a proper restriction

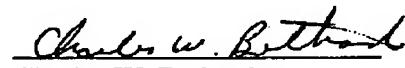
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requirement. Since the Examiner has already performed a search and applied the art to both sets of claims in the March 22, 2005 Office Action on the merits, Applicant respectfully submits that continuing prosecution on the merits for the entire set of claims is not an incrementally serious burden. Thus in view of the complete lack of or any showing of serious burden, Applicant respectfully submits that the restriction requirement in this instance is clearly improper. Given the absence of serious incremental burden, Applicant requests that the Examiner reconsider and withdraw this restriction requirement and continue the examination of the application on the merits.

In view of the June 20, 2005 Response, Applicant respectfully submits that claims 1-22 clearly and patentably distinguish over the cited references of record and as such are to be deemed allowable. Such allowance is hereby earnestly and respectfully solicited at an early date. If the Examiner has any suggestions or comments or questions, calls are welcomed at the phone number below.

Although it is not anticipated that any fees are due or payable since this response is being timely filed within the allowed one month time period, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. 50-3435.

Respectfully submitted,


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